

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:00CR358
)	
v.)	
)	
ALFRED D. ROGERS,)	ORDER
)	
Defendant.)	
)	

This matter is before the court on defendant Alfred D. Rogers' ("Rogers") motion for reconsideration of a reduction of sentence pursuant to [18 U.S.C. § 3582](#) (C)(2), Filing No. [180](#), and the motion to withdraw as attorney filed by counsel for the defendant, Jessica Douglas, Filing No. [175](#). On June 5, 2001, Rogers pled guilty to one count of conspiracy to distribute more than fifty (50) grams of a mixture or substance containing a detectable amount of cocaine base, in violation of [21 U.S.C. § 846](#) and one count of possession of a firearm during a drug trafficking crime, in violation of [18 U.S.C. § 924\(c\)](#). On December 6, 2001, Rogers was sentenced to a term of imprisonment of 121 months. This court reduced that sentence to 120 months on July 25, 2008, pursuant to the parties' stipulation.

The defendant argues the recent Supreme Court cases of [Gall v. U.S., — U.S. —, 128 S. Ct. 586 \(2007\)](#), and [Kimbrough v. U.S., — U.S. —, 128 S. Ct. 558 \(2007\)](#), render the Federal Sentencing Guidelines advisory. The defendant is correct. However, without determining whether *Gall* and *Kimbrough* are applicable to crack resentencing cases under amendment 706, this court finds that the defendant's sentence is subject to a statutory mandatory minimum. The court is not permitted to enter a sentence lower than the

mandatory **statutory** requirements. Under [21 U.S.C. § 841](#) (b)(1)(A)(iii), an 120-month mandatory minimum applies to the defendant. Thus, the defendant's motion for reconsideration is denied.

Additionally, because there are no nonfrivolous claims for relief, Jessica Douglas' motion to withdraw is granted.

IT IS ORDERED:

1. Defendant Rogers' motion for reconsideration of his motion for modification of sentence pursuant to [18 U.S.C. § 3582](#) (C)(2) (Filing No. [180](#)) is denied; and

2. The Motion to Withdraw (Filing No. [175](#)) is granted.

DATED this 8th day of September, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge